



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

FILLMORE FIELD OFFICE

35 East 500 North
Fillmore, Utah 84631

m/027/032



In Reply Refer to:
3800
(U-010)
UTU-070557

January 14, 2004

CERTIFIED MAIL #7002 3150 0004 1699 4483
RETURN RECEIPT REQUESTED

DECISION

DEXTER ANDERSON
REPRESENTATIVE
RED DOME
5865 W 200 S
FILLMORE UT 84631

PLAN OF OPERATIONS
DEFICIENT

On December 15, 2003, we received a Plan of Operations (Plan) for the Red Dome Cinder Quarry located in Sections 23 and 26, T. 21 S., R. 6 W. This Plan is necessary to bring the operation into compliance with the 43 CFR 3809 regulations. We have reviewed the Plan for completeness according to § 3809.401, and have found the following deficiencies:

1. There are no maps designating the eventual entire disturbance (§ 3809.401(b)(2)(i)) or a general schedule of operations from start through closure (§ 3809.401(b)(2)(vii)). The maps included reflect the current state of the mine; however, the Plan indicates that eventually, the entire mountain will be leveled. There is no map that reflects the total scope of the operation; in what sequence mining will take place and where concurrent reclamation will be performed as is mandated by § 3809.420(a)(5).

The Red Dome mining claims encompass about 500 acres. If you want to submit a Plan on that scope, we must require that you comply with § 3809.401(c)(1), and provide baseline information for us to analyze potential environmental impacts. You must contract out for studies needed to characterize the cave and cultural resources in the project area. Please contact us for a list of approved BLM contractors.

RECEIVED

JAN 20 2004

DIV. OF OIL, GAS & MINING

2. We do not agree that you need not make any effort to reestablish vegetation on the reclaimed areas. Our observation is that the lava beds do support some vegetation, and it is reasonable to expect you to return the site to 70% of the pre-mining vegetation ground cover required by the Utah Division of Oil, Gas and Mining (UDOGM). At any point in time, your reclamation bond will reflect the estimate cost it would take to establish vegetation on the disturbed areas.

We also do not concur with the premise of the cover letter for the Plan, which states: "It (the Plan) is being submitted with the understanding that the current reclamation bond as currently posted will continue to suffice as the required bond upon the acceptance of this proposal or any revision." The reclamation bond will be calculated as is mandated by § 3809.554: "You must estimate the cost to reclaim your operations as if BLM were hiring a third-party contractor to perform reclamation of your operations after you have vacated the project area. Your estimate must include BLM's cost to administer the reclamation contract." Right now, the financial guarantee is sufficient for about 64 acres (see enclosed spreadsheet) and that is assuming an unrealistically simplistic reclamation scenario. If you wish for the current \$44,000 financial guarantee to "continue to suffice", you must submit a Plan that we can review as mandated by §3809.401(d) and concur that, at all times during the life of the Plan, the reclamation cost would not exceed \$44,000. If your plan simply proposes disturbing up to 500 acres with no proposals for concurrent reclamation, your reclamation cost estimate will be at least 10 times as large as the currently held financial guarantee. Although you can, in accordance with §3809.553, submit a partial reclamation bond and increase it as the operation grows in size, the financial guarantee will ultimately be increased.

We suggest that you project your mining activities for the foreseeable future, no more than 10 years, and submit a map that reveals where your operation will affect during that time, and where you intend to conduct concurrent reclamation. If most of the area you would be affecting in the foreseeable future has already been disturbed, we can conduct the archaeological and cave surveys in house. You can then revise that Plan as the operation expands beyond those boundaries.

We will allow 60 days from receipt of this decision for you to submit either a revised Plan for the foreseeable future, or to submit maps delineating the possible full scope of the operation and to provide evidence that you have entered into contracts to conduct cultural and cave surveys of the entire affected area. Since Red Dome has been operating without an approved Plan for over 10 years, if you fail to submit a Plan that meets the requirements of the regulations within that time frame, we will be forced to take enforcement actions mandated by § 3809.600. We must also inform you that, even if we approve your Plan, if you do not have the proper permits in place with UDOGM, you will be in violation of the 43 CFR 3715 regulations, *Use and Occupancy Under the Mining Laws*. § 3715.5(b) states:

Board of Land Appeals (Board), the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Board, and to the appropriate Office of the Solicitor (see 43 CFR 4.412) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As mandated in 43 CFR 3809.808 this decision will remain in full force and effect during review and appeal unless a written request for a stay is granted.



Enclosure

Reclamation Cost Estimate
Form 1842-1

Cc: Tom Munson, UDOGM (M/027/032)
(w/copy of RCE



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

FILLMORE FIELD OFFICE

35 East 500 North
Fillmore, Utah 84631



In Reply Refer to:
3800
(U-010)
UTU-070557

January 14, 2004

CERTIFIED MAIL #7002 3150 0004 1699 4483
RETURN RECEIPT REQUESTED

DECISION

DEXTER ANDERSON
REPRESENTATIVE
RED DOME
5865 W 200 S
FILLMORE UT 84631

PLAN OF OPERATIONS
DEFICIENT

On December 15, 2003, we received a Plan of Operations (Plan) for the Red Dome Cinder Quarry located in Sections 23 and 26, T. 21 S., R. 6 W. This Plan is necessary to bring the operation into compliance with the 43 CFR 3809 regulations. We have reviewed the Plan for completeness according to § 3809.401, and have found the following deficiencies:

1. There are no maps designating the eventual entire disturbance (§ 3809.401(b)(2)(i)) or a general schedule of operations from start through closure (§ 3809.401(b)(2)(vii)). The maps included reflect the current state of the mine; however, the Plan indicates that eventually, the entire mountain will be leveled. There is no map that reflects the total scope of the operation; in what sequence mining will take place and where concurrent reclamation will be performed as is mandated by § 3809.420(a)(5).

The Red Dome mining claims encompass about 500 acres. If you want to submit a Plan on that scope, we must require that you comply with § 3809.401(c)(1), and provide baseline information for us to analyze potential environmental impacts. You must contract out for studies needed to characterize the cave and cultural resources in the project area. Please contact us for a list of approved BLM contractors.

RECEIVED

JAN 20 2004

DIV. OF OIL, GAS & MINING

2. We do not agree that you need not make any effort to reestablish vegetation on the reclaimed areas. Our observation is that the lava beds do support some vegetation, and it is reasonable to expect you to return the site to 70% of the pre-mining vegetation ground cover required by the Utah Division of Oil, Gas and Mining (UDOGM). At any point in time, your reclamation bond will reflect the estimate cost it would take to establish vegetation on the disturbed areas.

We also do not concur with the premise of the cover letter for the Plan, which states: "It (the Plan) is being submitted with the understanding that the current reclamation bond as currently posted will continue to suffice as the required bond upon the acceptance of this proposal or any revision." The reclamation bond will be calculated as is mandated by § 3809.554: "You must estimate the cost to reclaim your operations as if BLM were hiring a third-party contractor to perform reclamation of your operations after you have vacated the project area. Your estimate must include BLM's cost to administer the reclamation contract." Right now, the financial guarantee is sufficient for about 64 acres (see enclosed spreadsheet) and that is assuming an unrealistically simplistic reclamation scenario. If you wish for the current \$44,000 financial guarantee to "continue to suffice", you must submit a Plan that we can review as mandated by §3809.401(d) and concur that, at all times during the life of the Plan, the reclamation cost would not exceed \$44,000. If your plan simply proposes disturbing up to 500 acres with no proposals for concurrent reclamation, your reclamation cost estimate will be at least 10 times as large as the currently held financial guarantee. Although you can, in accordance with §3809.553, submit a partial reclamation bond and increase it as the operation grows in size, the financial guarantee will ultimately be increased.

We suggest that you project your mining activities for the foreseeable future, no more than 10 years, and submit a map that reveals where your operation will affect during that time, and where you intend to conduct concurrent reclamation. If most of the area you would be affecting in the foreseeable future has already been disturbed, we can conduct the archaeological and cave surveys in house. You can then revise that Plan as the operation expands beyond those boundaries.

We will allow 60 days from receipt of this decision for you to submit either a revised Plan for the foreseeable future, or to submit maps delineating the possible full scope of the operation and to provide evidence that you have entered into contracts to conduct cultural and cave surveys of the entire affected area. Since Red Dome has been operating without an approved Plan for over 10 years, if you fail to submit a Plan that meets the requirements of the regulations within that time frame, we will be forced to take enforcement actions mandated by § 3809.600. We must also inform you that, even if we approve your Plan, if you do not have the proper permits in place with UDOGM, you will be in violation of the 43 CFR 3715 regulations, *Use and Occupancy Under the Mining Laws*. § 3715.5(b) states:

"Your uses must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), as required under 43 CFR part 3800."

Thus, you must also submit to UDOGM, a Plan that professionally provides the information they need to review and approve it. Also, UDOGM may require its own interim reclamation bond. If so, we will release the \$44,000 bond we hold, once an acceptable financial guarantee is submitted to them. If you fail to meet any of UDOGM's standards or deadlines, we will order an immediate suspension of activities as is authorized by § 3715.7-1(a)(i).

If you do not agree with, and are adversely affected by, this decision, you have the right to request review by the Utah State Director (SD) of the Bureau of Land Management in accordance with 43 CFR 3809.800. If you exercise this right, your request, accompanied by a brief written statement explaining why we should change our decision and any documents that support your written statement, must be filed in writing within 30 days after you receive this decision. The envelope should be marked "State Director Review" and sent to the following address:

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
PO BOX 45155
SLC UT 84145-0155

You should include a telephone or fax number by which the SD can contact you. If the SD does not make a decision within 21 days on whether to accept your request for review, you should consider your request declined, and you may appeal this decision to the Office of Hearings and Appeals (OHA). You may also appeal to OHA if the SD's decision is adverse to you. You must file a notice of appeal to this office within 30 calendar days of the date you receive the SD's decision or decision not to review.

You may also bypass State Director review, and appeal directly to OHA in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Fillmore Field Office within 30 days of receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision, during the time that your appeal is being reviewed by the Interior

Board of Land Appeals (Board), the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Board, and to the appropriate Office of the Solicitor (see 43 CFR 4.412) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As mandated in 43 CFR 3809.808 this decision will remain in full force and effect during review and appeal unless a written request for a stay is granted.



Enclosure

Reclamation Cost Estimate
Form 1842-1

Cc: Tom Munson, UDOGM (M/027/032)
(w/copy of RCE

Reclamation Cost Model For Existing Notice Level Operations

Dozer Work				Earthwork
	Acres		Cost/Acre	
Light	64	Recontouring Cost	\$ 330.00	\$21,120.00
Moderate	0	Recontouring Cost	\$ 990.00	\$0.00
Heavy	0	Recontouring Cost	\$1,485.00	\$0.00
Excavator Work				
Roads with the side Slope,	Linear Feet		Cost/Linear Foot	
<30%	0	Recontouring Cost	\$ 1.50	\$0.00
>30%	0	Recontouring Cost	\$ 2.40	\$0.00
Areas of non-road disturbance where the use of dozer wouldn't be adequate.	Acres		Cost /Acre	
<30%	0	Recontouring Cost	\$4,665.00	\$0.00
>30%	0	Recontouring Cost	\$7,465.00	\$0.00
Revegetation				Revegetation
Non-Road disturbances with machine spreader	Acres		Cost/Acre	
	0	Revegetation Cost	\$ 600.00	\$0.00
Non-Road disturbances with manual spreading	64	Revegetation Cost	\$150.00	\$9,600.00
Road disturbances with machine spreader	Linear Feet		Cost/Linear Foot	
	0	Revegetation Cost	\$ 0.20	\$0.00
Road disturbances with manual spreader	0	Revegetation Cost	\$0.05	\$0.00
Mobilization				Mobilization
	No. Pieces of equipment		Cost/Piece	
	1	Mobilization Cost	\$ 300.00	\$300.00
Total Labor Cost	\$ 5,558.00	Total Operating and Maintanance (O&M) Cost		\$31,020.00
		Contractor's Profit	10% O&M Cost	\$3,102.00
		Estimated Contract		\$34,122.00
		Contingency	10% O&M Cost	\$3,102.00
		Total Estimated Contract and Contingency		\$37,224.00
Administrative Fees				
	Contract Administratio	16% O&M Cost		\$4,963.20
	Indirect Costs	21% Administrative Cost		\$1,042.27
	Engineering/Design	2% O&M Cost		\$620.40
	*Insurance	1.5% Labor Cost		\$0.00
	*Bond Maintenance	3% Rec. Cost		\$0.00
* Only Administered if Estimated Contract Costs over \$100,000.				
		Total Administrative Cost		\$6,625.87
		Bond Amount		\$43,849.87